

STATE OF MICHIGAN
COURT OF APPEALS

MARK MURDOCK,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

April 10, 2001

No. 217308

MTT

LC No. 00-260402

Before: Doctoroff, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of dismissal issued by the Michigan Tax Tribunal. We affirm.

Petitioner had requested a jury trial in the tribunal and a waiver of the \$25.00 filing fee. The tribunal informed petitioner that a jury trial was not available and denied the request to waive the filing fee. Petitioner was informed that failure to pay the required filing fee within fourteen days would result in dismissal of the case. Petitioner failed to pay the required fee and the case was dismissed.

Our review of Tax Tribunal decisions, in the absence of fraud, is limited to whether the tribunal made an error of law or adopted a wrong legal principle. *Schubert v Dep't of Treasury*, 212 Mich App 555, 558; 538 NW2d 447 (1995); *The Gillette Co v Dep't of Treasury*, 198 Mich App 303, 306; 497 NW2d 595 (1993).

Petitioner first argues that he was improperly denied his seventh amendment¹ right to a jury trial. There is no merit to this claim. The Seventh Amendment does not apply to the states, and thus has no application to the case before us. *Curtis v Loether* 415 US 189, 192 n 6; 94 S Ct 1005; 39 L Ed 2d 260 (1974); *Anzaluda v Band*, 457 Mich 530, 543 n 11; 578 NW2d 306 (1998). Further, even though petitioner does not specifically raise the issue, we note that he also has no

¹ US Const, Am VII, reads in pertinent part: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved"

constitutionally protected right to a jury trial pursuant to Const 1963, art 1, § 14,² *Meyer v Dep't of Treasury*, 129 Mich App 335; 341 NW2d 516 (1983).

Petitioner's remaining arguments are not properly before us because they were never properly presented to and decided by the Tax Tribunal. *Schubert, supra*. In any event, we will briefly address each of these unpreserved arguments.

Petitioner argues that the rights guaranteed him by US Const, am VI, were violated. Petitioner's reliance on the Sixth Amendment is misplaced because that amendment expressly applies only to criminal prosecutions.³ Also, contrary to petitioner's claim, it is apparent from the record that he was properly notified of the assessments and informed of his rights with regard to contesting them. *Keith v Department of Treasury*, 165 Mich App 105, 109-110; 418 NW2d 691 (1987).

Next, we reject petitioner's claim that the referee erred when the referee stated that there was no statutory authority that supported petitioner's argument that "the lack of certification from an IRS employee renders the audit fraudulent." None of the federal or state statutory provisions cited by petitioner support his position that a taxpayer is entitled to a verified IRS audit. 26 USC 6065, for example, requires that a taxpayer verify the taxpayer's returns and other documents submitted to the IRS. *United States v Moore*, 627 F2d 830, 834 (CA 7, 1980). Petitioner's conclusion that 26 USC 7622 requires that an IRS audit be certified and sworn to under oath is also misplaced. The statute merely provides that internal revenue personnel are authorized to *administer* oaths or affirmations and to "certify to such papers as may be necessary under the internal revenue laws or regulations[.]" meaning that internal revenue personnel are authorized to administer an oath to a taxpayer, requiring that the taxpayer tell the truth, and subjecting the taxpayer to a possible indictment for perjury, when a taxpayer makes representations to an IRS agent during an IRS investigation. The statute does not require that the IRS produce a certified copy of its audit.

We also find no merit to petitioner's claim that because the amount of tax due was provided for on a form which included the parenthetical "Intent to Assess," he never was properly assessed. The form petitioner cites to is clearly labeled "BILL FOR TAXES DUE." It includes the tax amount assessed, as required by MCL 205.21(2)(b); MSA 7.657(21)(2)(b). The parenthetical to which petitioner refers simply provides notice that respondent believes that the taxpayer owes the assessed amount, absent a successful contest of that amount. *Id.*; MCL 205.27a(2); MSA 7.657(27a)(2).

Likewise, there is no merit to petitioner's claim that the referee erroneously determined that the intent to assess notices were timely. The state did not "discover" that petitioner failed to

² Const 1963, art 1, § 13, reads in pertinent part: "The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. . . ." The right to a jury trial provided for in Const 1963, art 1, § 13 is consistent with its federal counterpart. *Feinberg v Straith Clinic*, 151 Mich App 204, 215; 390 NW2d 697 (1986).

³ US Const, am VI, begins, "In all criminal prosecutions,"

follow the requirements of MCL 206.325(2); MSA 7.557(1325) until it was notified of the deficiency by the Internal Revenue Service in September 1994. The intent to assess notices were issued on April 5, 1996. The assessments were therefore timely under MCL 205.27a(2); MSA 7.657(27a)(2).

Petitioner's final claim, that he cannot pay the assessed taxes because US Const, Art. I, § 10, mandates that no state shall make anything but gold and silver as tender in the payment of debts, is also without merit. *Legal Tender Case*, 110 US 421, 443-445; 4 S Ct 122, 127-128; 28 L Ed 204 (1884); *First National Bank of the Black Hills v Treadway*, 339 NW2d 119 (SD, 1983); *Chermack v Bjornson*, 302 Minn 213, 214; 223 NW2d 659, 660 (1974).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra